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8 Counsel for Plaintiff

9 UNITED STATES DISTRICT COURT  
10  
11 NORTHERN DISTRICT OF CALIFORNIA

12 EDWARD BLASCO, Individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 KEURIG GREEN MOUNTAIN, INC., BRIAN  
17 P. KELLEY, and FRANCES G. RATHKE,

18 Defendants.

Case No: 3:15-cv-02766

**[CORRECTED] CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

19 Plaintiff Edward Blasco (“Plaintiff”), individually and on behalf of all other persons  
20 similarly situated, by her undersigned attorneys, for her complaint against Defendants, alleges the  
21 following based upon personal knowledge as to himself and his own acts, and information and  
22 belief as to all other matters, based upon, inter alia, the investigation conducted by and through his  
23 attorneys, which included, among other things, a review of the Defendants’ public documents,  
24 announcements, United States Securities and Exchange Commission (“SEC”) filings, wire and press  
25 releases published by and regarding Keurig Green Mountain, Inc. (“Keurig” or the “Company”),  
26 analysts’ reports and advisories about the Company, and information readily obtainable on the  
27 Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth  
28 herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1  
2 1. This is a federal securities class action on behalf of a class consisting of all persons  
3 other than Defendants (defined below) who purchased or otherwise acquired Keurig securities  
4 between February 4, 2015 and May 14, 2015, both dates inclusive (the “Class Period”). Plaintiff  
5 seeks to recover compensable damages caused by Defendants’ violations of the federal securities  
6 laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934  
7 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of  
8 its officers and/or directors.

9 2. Throughout the Class Period, Defendants made false and/or misleading statements,  
10 as well as failed to disclose material adverse facts about the Company’s business, operations, and  
11 prospects. Specifically, Defendants made false and/or misleading statements and/or failed to  
12 disclose that: (1) Defendants’ projections for sales were unrealistic and unattainable given the  
13 continuing consumer confusion over the Company’s Keurig 2.0 brewing system; (2) the retail  
14 distribution of Company’s new cold brewing system, Keurig Kold, would be delayed; and (3) as a  
15 result, Defendants’ statements about Keurig’s business, operations, and prospects were false and  
16 misleading and/or lacked a reasonable basis.

17 3. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline  
18 in the market value of the Company’s securities, Plaintiff and other Class members have suffered  
19 significant losses and damages.

**JURISDICTION AND VENUE**

20  
21 4. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of  
22 the Securities Exchange Act, and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

23 5. This Court has jurisdiction over the subject matter of this action pursuant to Section  
24 27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.

25 6. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15  
26 U.S.C. § 78aa and 28 U.S.C. § 1391(b) because Keurig conducts business and has an office in this  
27 District.

8. Plaintiff, as set forth in the accompanying certification, incorporated by reference  
herein, purchased Keurig securities at artificially inflated prices during the Class Period and has  
been damaged thereby.

10. Defendant Brian P. Kelley (“Kelley”) has served as the Company’s Chief Executive Officer throughout the class period.

12. Defendants Kelley and Rathke are sometimes collectively referred to herein as “Individual Defendants.”

## SUBSTANTIVE ALLEGATIONS

1           14.      Keurig produces and sells specialty coffee, coffeemakers, teas, and other beverages  
2           in the United States and Canada.

16           16.     On February 4, 2015, Defendant Kelly indicated that there was confusion among  
17 consumers as to which brands of coffee the Keurig 2.0 could brew during the Company's Q1 2015

1 Earnings Conference Call, which impacted the Company's financial performance. Defendant Kelley  
2 stated in part:

3 Quite simply our 2.0 launch got off to a slower start than we planned due to a few  
4 important factors. First our efforts to get new packs transitioned on the retail shelves  
5 and in the homes did not move quickly enough. There was also confusion among  
6 consumers as to whether the 2.0 would still brew all of their favorite brands.

7 These issues impacted consumer perception of the 2.0 and led to lower than expected  
8 brewer ratings early on. While consumer confusion has begun to subside and ratings  
9 have improved the effect weighed on brewer sales during the key holiday season.

10 17. Keurig Kold is the Company's new cold beverage drink system, which has yet to  
11 launch.

### 12 **Materially False and Misleading Statements**

13 18. The Class Period begins on February 4, 2015, when the Company issued a press  
14 release announcing its financial results for the fiscal first quarter of 2015. It provided the  
15 Company's outlook for the second quarter of 2015, stating in part:

#### 16 Second Quarter 2015

- 17 • *Net sales growth in the mid-single digits over the second quarter of fiscal year 2014*
- 18 • An effective tax rate of approximately 36% to 37%
- 19 • Non-GAAP EPS in a range of \$1.00 to \$1.05 which:
  - 20 ○ Includes an approximate \$0.08 dilutive impact of the fiscal 2014 Coca-Cola and Lavazza Equity Transactions
  - 21 ○ Includes an estimated \$0.07 headwind from foreign currency exchange
  - 22 ○ Excludes any additional actions the Company may take to offset dilution during the quarter
  - 23 ○ Excludes the amortization of identifiable intangibles related to the Company's acquisitions and legal and accounting expenses related to the Company's pending securities and stockholder derivative class action litigation and antitrust litigation

24 (Emphasis added).

25 19. On that same day, the Company held its Q1 2015 Earnings Conference Call. During  
26 the call, Defendant Kelley stated the following with regards to the launch of Keurig Kold:  
27  
28

Now let me move on to one of our most important objectives for 2015 which is the introduction of Keurig [K]old to North American consumers. ***Our plans are progressing well and we're on track launch this fall.***

(Emphasis added).

20. On May 6, 2015, the Company held its Q2 2015 Earnings Conference Call. During the call, Defendant Kelley stated the following with regards to the launch of Keurig Kold:

***Combined with our forthcoming cold system launch which is on track for the fall of 2015,*** we expect to be the leading player in the growing trend to offer premium beverage systems at home.

(Emphasis added).

21. The statements contained in ¶¶ 18-20 were materially false and/or misleading when made because defendants failed to disclose or indicate that: (1) Defendants' projections for sales were unrealistic and unattainable given the continuing consumer confusion over the Company's Keurig 2.0 brewing system; (2) the retail distribution of Company's new cold brewing system, Keurig Kold, would be delayed; and (3) as a result, Defendants' statements about Keurig's business, operations, and prospects were false and misleading and/or lacked a reasonable basis.

### **The Truth Emerges**

22. On May 6, 2015, the Company issued a press release aftermarket announcing its financial results for the fiscal second quarter of 2015. The press release revealed that the Company's sales growth for the quarter fell below its previously stated expectations, stating in part:

#### **Keurig Green Mountain Reports Fiscal Second Quarter 2015 Results**

- Non-GAAP EPS<sup>1</sup> of \$1.03 and GAAP EPS of \$0.97
- ***Net sales growth of 2%***; 3% excluding foreign currency
- Updated fiscal year 2015 outlook includes revenue growth of flat to low-single digits, non-GAAP EPS decline of mid-single-digits and free cash flow of \$120-\$170 million
- Repurchased \$837 million of common shares in the quarter
- Board of Directors declared \$0.2875 quarterly dividend

1 WATERBURY, Vt.--(BUSINESS WIRE)-- Keurig Green Mountain, Inc.  
 2 (NASDAQ: GMCR), a leader in specialty coffee, coffee makers, teas and other  
 3 beverages with its innovative brewing technology, today announced its business  
 4 results for the 13 weeks ended March 28, 2015.

5 "We are pleased to report that our earnings per share in the second quarter were in  
 6 line with our guidance. ***Our top-line growth, however, was below our expectations***  
 7 ***primarily due to the slower than expected transition to the Keurig 2.0 system.*** We  
 8 are taking actions to reduce brewer inventories, enhance our 2.0 brewer packaging to  
 9 better communicate our extensive brand variety and step up innovation on our  
 10 owned brands," said President and CEO, Brian Kelley.

11 (Emphasis added).

12 23. On that same day, the Company held its Q2 2015 Earnings Conference Call. During  
 13 the call, Defendant Kelley stated the following with regards to the Company's disappointing sales  
 14 results:

15 With any new product introduction they are always challenges that are front end  
 16 loaded and our transition to 2.0 was particularly complex. ***Point of sale results were***  
 17 ***not as strong as anticipated which led to higher levels of brew inventory of retail***  
 18 ***and on our balance sheet.***

19 ***Some of this was due to consumer confusion around pod compatibility which***  
 20 ***we've mentioned in the past.*** Although we are seeing improvement as we transition  
 21 more formally unlicensed brands into our manufacturing system.

22 (Emphasis added).

23 24. On that same day, *Bloomberg Business* published an article concerning the slow  
 24 sales of Keurig 2.0 brewing system for the quarter. The article quotes Defendant Kelley and states  
 25 in part:

26 ***Sales volume for the company's brewers declined 22 percent last quarter,***  
 27 ***underscoring the slow adoption of the new Keurig 2.0,*** which lets people brew a  
 28 carafe of coffee at a time. Brewer inventory also is stacking up at retailers, Keurig  
 said. Separately, the company named a new chief financial officer, Peter Leemputte,  
 who will replace Fran Rathke in August.

Keurig had said in February that the Keurig 2.0 rollout was off to a slow start.  
 Though customers were thought to be eager for a larger brewer, many were confused

1 about what pods they could use in the new machines. Keurig's original system  
2 popularized Kcup singleserve canisters, leading a variety of brands to offer coffees  
and teas in the format.

3 ***"These issues with 2.0 are a bit of a continuation of what we went through in the***  
4 ***first quarter,"*** Chief Executive Officer Brian Kelley said in an interview. ***"There***  
5 ***was consumer confusion, and while less, we still have some consumers who don't***  
***believe it brews all the brands that it does."***

6 (Emphasis added).

7  
8 25. On this adverse news, shares of Keurig fell \$9.92 per share or over 9% to close at  
9 \$98.16 per share on May 7, 2015, damaging investors.

10 26. On May 14, 2015, the Company held a webcast aftermarket concerning Keurig Kold.  
11 During the webcast, Defendant Kelley revealed Keurig Kold will be sold online and in certain  
12 stores starting this fall, but won't be available in all its retail outlets until next year.

13 27. On this adverse news, shares of Keurig fell \$8.82 per share or over 8% to close at  
14 \$94.26 per share on May 15, 2015, damaging investors.

#### 15 **CLASS ACTION ALLEGATIONS**

16 28. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
17 Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise  
18 acquired Keurig securities traded on NASDAQ during the Class Period (the "Class"); and were  
19 damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are  
20 Defendants herein, the officers and directors of the Company, at all relevant times, members of their  
21 immediate families and their legal representatives, heirs, successors or assigns and any entity in  
22 which Defendants have or had a controlling interest.

23 29. The members of the Class are so numerous that joinder of all members is  
24 impracticable. Throughout the Class Period, Keurig securities were actively traded on NASDAQ.  
25 While the exact number of Class members is unknown to Plaintiff at this time and can be  
26 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or  
27 thousands of members in the proposed Class. Record owners and other members of the Class may  
28 be identified from records maintained by Keurig or its transfer agent and may be notified of the

1 pendency of this action by mail, using the form of notice similar to that customarily used in  
2 securities class actions.

3 30. Plaintiff's claims are typical of the claims of the members of the Class as all  
4 members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal  
5 law that is complained of herein.

6 31. Plaintiff will fairly and adequately protect the interests of the members of the Class  
7 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has  
8 no interests antagonistic to or in conflict with those of the Class.

9 32. Common questions of law and fact exist as to all members of the Class and  
10 predominate over any questions solely affecting individual members of the Class. Among the  
11 questions of law and fact common to the Class are:

- 12 • whether the federal securities laws were violated by Defendants' acts as alleged  
13 herein;
- 14 • whether statements made by Defendants to the investing public during the Class  
15 Period misrepresented material facts about the business, operations and management  
16 of Keurig;
- 17 • whether the Individual Defendants caused Keurig to issue false and misleading  
18 statements during the Class Period;
- 19 • whether Defendants acted knowingly or recklessly in issuing false and misleading  
20 statements;
- 21 • whether the prices of Keurig securities during the Class Period were artificially  
22 inflated because of the Defendants' conduct complained of herein; and,
- 23 • whether the members of the Class have sustained damages and, if so, what is the  
24 proper measure of damages.

25 33. A class action is superior to all other available methods for the fair and efficient  
26 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
27 damages suffered by individual Class members may be relatively small, the expense and burden of  
28



1 individual litigation make it impossible for members of the Class to individually redress the wrongs  
2 done to them. There will be no difficulty in the management of this action as a class action.

3 34. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-  
4 on-the-market doctrine in that:

- 5 • Defendants made public misrepresentations or failed to disclose material facts during  
6 the Class Period;
- 7 • the omissions and misrepresentations were material;
- 8 • Keurig securities are traded in efficient markets;
- 9 • the Company's shares were liquid and traded with moderate to heavy volume during  
10 the Class Period;
- 11 • the Company traded on NASDAQ, and was covered by multiple analysts;
- 12 • the misrepresentations and omissions alleged would tend to induce a reasonable  
13 investor to misjudge the value of the Company's securities; and
- 14 • Plaintiff and members of the Class purchased and/or sold Keurig securities between  
15 the time the Defendants failed to disclose or misrepresented material facts and the  
16 time the true facts were disclosed, without knowledge of the omitted or  
17 misrepresented facts.

18 35. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
19 presumption of reliance upon the integrity of the market.

20 36. Alternatively, Plaintiff and the members of the Class are entitled to the presumption  
21 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*  
22 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their  
23 Class Period statements in violation of a duty to disclose such information, as detailed above.

24 **NO SAFE HARBOR**

25 37. The statutory safe harbor provided for forward-looking statements under certain  
26 circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The  
27 statements alleged to be false and misleading herein all relate to then-existing facts and conditions.

1 In addition, to the extent certain of the statements alleged to be false may be characterized as  
 2 forward looking, they were not identified as “forward-looking statements” when made and there  
 3 were no meaningful cautionary statements identifying important factors that could cause actual  
 4 results to differ materially from those in the purportedly forward-looking statements. In the  
 5 alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking  
 6 statements pleaded herein, Defendants are liable for those false forward-looking statements because  
 7 at the time each of those forward-looking statements was made, the speaker had actual knowledge  
 8 that the forward-looking statement was materially false or misleading, and/or the forward-looking  
 9 statement was authorized or approved by an executive officer of Keurig who knew that the  
 10 statement was false when made.

### 11 **FIRST CLAIM**

#### 12 **Violation of Section 10(b) Of** 13 **The Exchange Act Against and Rule 10b-5** 14 **Promulgated Thereunder Against All Defendants**

15 38. Plaintiff repeats and realleges each and every allegation contained above as if fully  
 16 set forth herein.

17 39. During the Class Period, Defendants carried out a plan, scheme and course of  
 18 conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing  
 19 public, including plaintiff and other Class members, as alleged herein; and (2) cause plaintiff and  
 20 other members of the Class to purchase Keurig’s securities at artificially inflated prices. In  
 21 furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them,  
 22 took the actions set forth herein.

23 40. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue  
 24 statements of material fact and/or omitted to state material facts necessary to make the statements  
 25 not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud  
 26 and deceit upon the purchasers of the Company’s common stock in an effort to maintain  
 27 artificially high market prices for Keurig’s securities in violation of Section 10(b) of the Exchange  
 28

1 Act and Rule 10b-5 thereunder. All Defendants are sued either as primary participants in the  
2 wrongful and illegal conduct charged herein or as controlling persons as alleged below.

3 41. Defendants, individually and in concert, directly and indirectly, by the use, means or  
4 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
5 continuous course of conduct to conceal adverse material information about the business, operations  
6 and future prospects of Keurig as specified herein.

7 42. These Defendants employed devices, schemes and artifices to defraud, while in  
8 possession of material adverse non-public information and engaged in acts, practices, and a course  
9 of conduct as alleged herein in an effort to assure investors of Keurig value and performance and  
10 continued substantial growth, which included the making of, or participation in the making of,  
11 untrue statements of material facts and omitting to state material facts necessary in order to make  
12 the statements made about Keurig and its business operations and future prospects in the light of the  
13 circumstances under which they were made, not misleading, as set forth more particularly herein,  
14 and engaged in transactions, practices and a course of business that operated as a fraud and deceit  
15 upon the purchasers of Keurig securities during the Class Period.

16 43. Each of the Defendants' primary liability, and controlling person liability, arises  
17 from the following facts: (1) Individual Defendants were high-level executives, directors, and/or  
18 agents of the Company during the Class Period and members of the Company's management team  
19 or had control thereof; (2) each of these Defendants, by virtue of his responsibilities and activities as  
20 a senior officer and/or director of the Company, was privy to and participated in the creation,  
21 development and reporting of the Company's financial condition; (3) each of these defendants  
22 enjoyed significant personal contact and familiarity with the other defendants and was advised of  
23 and had access to other members of the Company's management team, internal reports and other  
24 data and information about the Company's finances, operations, and sales at all relevant times; and  
25 (4) each of these defendants was aware of the Company's dissemination of information to the  
26 investing public which they knew or recklessly disregarded was materially false and misleading.

45. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Keurig's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Keurig's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclose in public statements by Defendants during the Class Period, Plaintiff and the other members of the Class acquired Keurig securities during the Class Period at artificially high prices and were or will be damaged thereby.

46. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding Keurig financial results, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Keurig securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

47. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

48. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

49. This action was filed within two years of discovery of the fraud and within five years  
of each plaintiff's purchases of securities giving rise to the cause of action.

27 SECOND CLAIM

**Violation of Section 20(a) Of  
The Exchange Act Against Individual Defendants**

50. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

51. Individual Defendants are sued herein as a controlling person of Keurig.

52. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness and/or intimate knowledge of the misleading statements disseminated to the investing public, these defendants had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of the primary violator, including the content and dissemination of the various statements that plaintiff contends are false and misleading. In particular, each defendant had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

53. As set forth above, Keurig violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.

54. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

55. This action was filed within two years of discovery of the fraud and within five years of each Plaintiff's purchases of securities giving rise to the cause of action.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Class Counsel;

B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

1 C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this  
2 action, including counsel fees and expert fees; and

3 D. Such other and further relief as the Court may deem just and proper.

4 **JURY TRIAL DEMANDED**

5 Plaintiff hereby demands a trial by jury.

6 Dated: June 19, 2015

Respectfully submitted,

7 **THE ROSEN LAW FIRM, P.A.**

8 /s/ Laurence Rosen

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